

INTRA-DEPARTMENT MEMORANDUM  
NH DEPARTMENT OF SAFETY – BUREAU OF HEARINGS

TO: CURTIS N. DUCLOS, JR. September 5, 2000  
AND  
ALL BUREAU EMPLOYEES

FROM: JOHN A. STEPHEN  
ASSISTANT COMMISSIONER


SUBJECT: TECHNICAL ADVICE MEMORANDUM (TAM)  
BOH-00-1

**THIS TAM IMMEDIATELY RESCINDS TAM BOH-98-2 WHICH WAS ISSUED ON MAY 19, 1998.** It is issued pursuant to Saf-C 102.061 and shall be binding upon all members of the bureau of hearings. Pursuant to RSA 541-A: 16 II (a), it shall be made available to the public and should be filed within your Saf-C 2800 series or in a separate binder.

On January 1, 1997, RSA 265:1-a took effect. It requires prior judicial approval of "sobriety checkpoints." Specifically, this statute empowers the superior court to "issue an order" authorizing sobriety checkpoints after determining that it is "warranted" and that the "proposed method of stopping vehicles satisfied constitutional guarantees."

The validity of the order issued by the superior court is not within the scope of the administrative license suspension (ALS) hearing prescribed in RSA 265:91-b II (a) – (f). A hearings examiner has no authority to overturn a superior court order. However, hearings examiners should allow parties to place an objection on the record in order to preserve this issue for a superior court appeal.

Approved September 5, 2000 by:

  
Richard M. Flynn  
Commissioner

INTRA DEPARTMENT MEMORANDUM  
NH DEPARTMENT OF SAFETY-BUREAU OF HEARINGS

TO: CURTIS N. DUCLOS, JR. MAY 19, 1998  
AND  
ALL BUREAU EMPLOYEES

FROM: JOHN A. STEPHEN  
ASSISTANT COMMISSIONER

SUBJECT: TECHNICAL ADVICE MEMORANDUM (TAM)  
BOH-98-2 IMPLEMENTATION OF Saf-C 2801.041

This TAM is pursuant to Saf-C 102.061 and shall be binding upon all members of the bureau of hearings. Pursuant to RSA 541-A: 16 II (a), it shall be made available to the public and should be filed within your Saf-C 2800 series rules or in a separate binder.

On January 1, 1997, RSA 265:1-a took effect which requires prior judicial approval of "Sobriety Checkpoints". Specifically, this statute empowers the Superior Court to "issue an order" authorizing sobriety checkpoints after determining that it is "warranted" and that the "proposed method of stopping vehicles satisfied constitutional guarantees."

The validity of the order issued by the superior court is not within the scope of the Administrative License Suspension (ALS) hearing prescribed in RSA 265:91-b II (a) - (f). A hearings examiner has no authority to review and/or overturn a superior court order. However, hearings examiners should allow parties to place an objection on the record in order to preserve this issue for a superior court appeal.

Hearings examiners must continue to recognize that reasonable/articulable grounds for the stop are subject to review and therefore, whether the law enforcement officer has followed "the proposed method of stopping vehicles" as determined by the superior court order, is within the scope of the ALS hearing.

Approved May 19, 1998 by:

  
Richard M. Flynn, Commissioner